

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4722 of 1984

Date of decision: 21-08-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NANDLAL M GODHAWANI

Versus

FAKIR HUSENSHA SAFA HUSSAIN

Appearance:

MR SURESH M SHAH for Petitioner
Mr. Nigam Shukla for Respondent No. 4
None present for other respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/08/96

ORAL JUDGEMENT

Challenge is made by the petitioner in this special civil application to the order of the Gujarat Revenue Tribunal dated 26th July, 1984 made in Appeal No.TEN.A.R.78/82, Rajkot. Under the order impugned in this special civil application the Tribunal has set aside the order of the Joint Charity Commissioner dated 29th July, 1982 under which permission has been granted to the

Trust for sale of the premises in question to the petitioner. It is not in dispute that the petitioner was in occupation of a shop belonging to the Trust. In addition to the shop there were two small rooms which were in possession of the Trust. The aforesaid premises were valued by Government Valuer. The Government Valuer has assessed the value of these premises at Rs.31,175/on 1-2-1982. The Trust has given option to the petitioner to purchase the said premises for the aforesaid amount. On 12-2-1982 an agreement for sale has been entered into for Rs.35,000/- Application for permission for sale of the premises was filed before the Charity Commissioner and after following the procedure laid down the same has been granted by the said authority on 31st July, 1982. Sale deed was registered in favour of the petitioner on 3-8-1982. After the sale deed was executed, the petitioner applied for grant of permission for construction of shop after demolition of the said shop, which has been granted by the Municipal Council. Thereafter the petitioner has constructed new shop. Respondent No.3 who has not raised any objection in the proceedings before the Charity Commissioner filed appeal on 13-9-1992 before the Gujarat Revenue Tribunal. That appeal has been filed beyond limitation. Respondent No.2 who has also not raised any objection before the Charity Commissioner moved an application for impleading him as appellant in the appeal. On 18th November 1984 respondent No.3 has withdrawn himself from the appeal, but the Tribunal has added respondent No.2 as appellant on the same day. Respondent No.2 has filed the valuation report of the premises in question, under which valuation has been stated to be Rs.1,34,000/-. This valuation report has been prepared by Civil Engineer on 14-5-1983.

2. The Gujarat Revenue Tribunal has set aside the permission for sale granted by the Charity Commissioner in favour of the petitioner on two grounds. Firstly the Tribunal held that the Valuation Report of the Government Valuer cannot be relied upon. The second reason given has been that the agreement for sale was not a registered document. Both the reasons are difficult to be accepted. Valuation of the property has been made when the petitioner was a tenant therein. The second valuation was made when the property was not in possession of the tenant. Value of the property which is not in possession of the landlord naturally will be not that much as the value of the property which is in possession of the landlord. Secondly the Tribunal has not discussed how the valuation which has been made by the Government Valuer is inadequate and prima facie not acceptable. The Tribunal should not have been influenced merely by the

figures. The Tribunal has ignored the fact that earlier when the valuation was made the property was in possession of the tenant. The second reason which has been given that the agreement for sale was not registered is also not supported by any provision of law. The Tribunal has given the finding that the document agreement for sale - dated 12-2-1982 was not registered although under the present legal position in Gujarat even such document requires registration and in absence of registration such document cannot be considered. In support of the finding the Tribunal has not given reference to any of the relevant provisions. Further reason given that the learned Charity Commissioner has not held detailed inquiry is also based on no material or evidence. The Tribunal has not given out how the inquiry conducted by the Charity Commissioner was defective.

3. Taking into consideration totality of the case, order of the Gujarat Revenue Tribunal cannot be allowed to stand.

4. In the result the writ petition succeeds and the same is allowed. Order of the Gujarat Revenue Tribunal dated 26-7-1984 passed in Appeal No.TEN.A.R.78/82,Rajkot is quashed and set aside. The matter is remanded back to the Tribunal to decide the matter afresh in accordance with law, after giving an opportunity of hearing to all concerned parties. Rule made absolute in the aforesaid terms. No order as to costs.

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